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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

FILE: [REDACTED]

Office: New York

Date:

MAR 16 2001

IN RE: Applicant: [REDACTED]

APPLICATION:

Application for Certificate of Citizenship under § 341(a) of the
Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Identification data deleted to
prevent disclosure of information
invasion of personal privacy

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born on August 18, 1980, in Yemen. The applicant's father, [REDACTED] was born in Yemen in 1960 and became a naturalized U.S. citizen on April 26, 1996. The applicant's mother, [REDACTED] was born in Yemen in 1961 and never had a claim to United States citizenship. The applicant's parents married each other in September 1976. The applicant was lawfully admitted for permanent residence on October 21, 1997. The applicant is seeking a certificate of citizenship under § 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1433.

The district director reviewed the record and concluded that the applicant was over the age of 18 years before final processing of the application was completed and denied the application accordingly.

On appeal, the applicant disagrees with the decision stating that he was under the age of 18 when the application was filed and that he was mistreated by the decision.

Section 322 of the Act provides, in part, that:

(a) APPLICATION OF CITIZEN PARENTS: REQUIREMENTS.-A parent who is a citizen of the United States may apply to the Attorney General for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General that the following conditions have been fulfilled:

- (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- (2) The child is physically present in the United States pursuant to a lawful admission.
- (3) The child is under the age of 18 years and in the legal custody of the citizen parent.
- (4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years and the child meets the requirements for being a child under subparagraph (E) or (F) of § 101(b)(1).
- (5) If the citizen parent has not been physically present in the United States or its outlying possessions for a period or periods totaling not

less than 5 years, at least 2 of which were after attaining the age of 14 years-

(A) The child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or

(B) A citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14 years.

(b) ATTAINMENT OF CITIZENSHIP STATUS; RECEIPT OF CERTIFICATE.-Upon approval of the application (which may be filed abroad) and, except as provided in the last sentence of § 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

In 1994, § 322 of the Act was amended to provide for expedited naturalization of certain children born outside the United States. See Immigration and Technical Corrections Act of 1994 (INTCA), § 102, Pub.L. 103-416, 108 Stat. 4307. Unlike children who acquire citizenship through a citizen parent as of a date of their birth, children who are expeditiously naturalized under § 322 of the Act based on their parent's/grandparent's residence, become citizens upon approval of the application and subscribing to the oath of allegiance (if applicable).

8 C.F.R. 322.2(a) provides that to be eligible for "expeditious naturalization" under § 322 of the Act, a child on whose behalf an application for naturalization has been filed by a parent who is, at the time of filing, a citizen of the United States, must: (1) Be unmarried and under 18 years of age, both at the time of application and at the time of admission to citizenship.

8 C.F.R. 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to meet the age requirements of § 322 of the Act, and the appeal will be dismissed.

This decision is without prejudice to the applicant's seeking U.S. citizenship through normal naturalization procedures by filing an Application for Naturalization on Form N-400 with a Service office having jurisdiction over his residence.

ORDER: The appeal is dismissed.